STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Petition of	)	
	)	
Global NAPs, Inc.	)	
	)	
For Arbitration Pursuant to Section 252(b) of	)	Docket No.:_____
The Telecommunications Act of 1996 to	)	
Establish an Interconnection Agreement with	)	
Illinois Bell Telephone Company d/b/a	)	
Ameritech Illinois	)	

PETITION FOR ARBITRATION

Negotiation Request:	**8/21/01**
135th Day After Receipt:	**11/5/01***
160th Day After Receipt:	**11/30/01***
9 Months After Receipt:	**5/21/02**

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On Behalf of **Global NAPs, Inc.**

November 30, 2001

* As explained more fully in Section III of this petition, GNAPs and SBC have agreed to waive the negotiation period in Illinois. The Parties waived the negotiation period so that the arbitration window closing date for Illinois would coincide with the arbitration window closing date for the three other states the Parties were negotiating (California, Nevada and Ohio). Thus, the Parties have agreed that the arbitration window closes on November 30, 2001, making this petition timely filed under the Act. *See* 47 U.S.C. § 252(b)(1); Exhibit A, Negotiation Letters.

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PETITION FOR ARBITRATION

1. Pursuant to Section 252(b) of the Telecommunications Act of 1996[1] (the "Act") and Part 761 – rules of Arbitration Practice ("Illinois Arbitration Rules"), 83 Ill. Adm. Code 761, Global NAPs, Inc. ("GNAPs") hereby petitions the Illinois Commerce Commission ("Commission") for arbitration of unresolved issues arising out of the interconnection Agreement negotiations between GNAPs and Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech-IL").

2. GNAPs requests that the Commission resolve each issue identified in Section V below by ordering the Parties to incorporate GNAPs' position into the Parties' final interconnection Agreement. In support of this petition, GNAPs states:

I. THE PARTIES

3. GNAPs is a facilities-based competitive local exchange carrier ("CLEC") that provides local exchange and interexchange telecommunications services in a number of states. Under the Act, GNAPs is a "telecommunications carrier" and "local exchange

[1] 47 U.S.C. § 252(b).

carrier."[2] GNAPs is a Delaware Corporation with its principal place of business at 10 Merrymount Road, Quincy, Massachusetts, 02169. The State of Illinois has certified GNAPs to provide local exchange services throughout Illinois.[3] GNAPS is currently in the process of developing its operations in Illinois.

4. GNAPs' representatives are as follows:

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2 *See* 47 U.S.C. §§ 153(26), 153(44).

3 *See Order, Global NAPs Illinois, Inc. Application to Operate as a Facilities-Based and Resold Carrier of Local Telecommunications Services Statewide in the State of Illinois,* No. 01-0445, (I.C.C. Oct. 24, 2001).

5. Ameritech-IL is an incumbent provider of local exchange services within the State of Illinois. Ameritech-IL is, on information and belief, a subsidiary of SBC Communications, Inc. ("SBC"), a Delaware corporation with its principal place of business at 175 E. Houston, San Antonio, Texas, 78205. Ameritech-IL is, and has been at all material times, an Incumbent Local Exchange Carrier ("ILEC") in the State of Illinois as defined by Section 251(h) Act.[4]

6. Ameritech-IL's primary representative during the interconnection negotiations has been:

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Area Manager – Negotiations SBC
530 Preston Avenue, 3rd Floor
Meriden, CT 06450
203-634-218
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II. JURISDICTION AND APPLICABLE LEGAL STANDARD

7. The Commission has jurisdiction over GNAP's petition for arbitration pursuant to Section 252 of the Act[5] and Part 761 of the Illinois Rules of Arbitration Practice.

8. Under the Act, either party to an interconnection negotiation may petition the relevant state commission for arbitration of open issues if negotiations fail to yield an agreement. 47 U.S.C. 252(b). Under Section 252(b)(1), a party's request for arbitration

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4 *See* 47 U.S.C. § 251(h).

5 *See* 47 U.S.C. §§ 252 (b)-(c). Section 252(c) of the Act requires that a state regulatory authority resolving open issues through arbitration ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and] establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252] and provide a schedule for implementation of the terms and conditions by the Parties to the Agreement. 47 U.S.C. § 252.

to the state commission must be made between the 135th day and the 160th day after the date the ILEC receives a request for negotiations under Section 251 of the Act.

9. GNAPs requested negotiation on 8/21/01. The 160th day after Ameritech-IL's receipt of GNAPs' request is 11/30/01.[6] Accordingly, this petition is timely filed. Pursuant to Section 252(b)(4)(C) of this Act, this Commission retains exclusive jurisdiction to resolve the issues until May 21, 2002. 47 U.S.C. § 252b)(4)(C). GNAPs requests that the Commission conduct an evidentiary hearing in this proceeding.

10. This arbitration must be resolved under the standards established in 47 U.S.C. §§ 251 and 252, applicable rules and orders issued by the Federal Communications Commission ("FCC"), and applicable statutes, rules and orders of this Commission. Accordingly, this Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of applicable federal and state law.

III. NEGOTIATIONS

11. In the last several months, GNAPs has initiated negotiations of interconnection agreements to cover interconnection of the Parties' networks in several states, including Ohio, Illinois, Nevada and California. At the outset of negotiations SBC confirmed that its proposed interconnection agreement would govern the terms of interconnection in each state in which GNAPs requested interconnection with SBC. For that reason, the Parties agreed that the outcome of the negotiations would bind the Parties' respective operations in Ohio, Illinois, Nevada, and California.

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[6] GNAPs and SBC have agreed to waive the negotiation period in Illinois. The Parties waived the negotiation period so that the arbitration window closing date for Illinois would coincide with the arbitration window closing date for the three other states the Parties are negotiating (California, Nevada and Ohio). Thus, the Parties have agreed that the arbitration window closes on November 30, 2001, making this petition timely filed under the Act. *See* 47 U.S.C. § 252(b)(1); Exhibit A, Negotiation Letters.

12. For the State of Illinois formal negotiations between the Parties commenced on August 16, 2001.[7] A copy of GNAPs' request to initiate negotiations and letters of agreement extending such negotiations are attached as Exhibit A.

13. Furthermore, the Parties have attempted to negotiate an interconnection agreement for their respective operations in the State of Connecticut. However, because the Parties failed to resolve disputed issues, GNAPs and SBC are now arbitrating an interconnection agreement before the Connecticut Department of Public Utility Control ("DPUC"). The issues that are being arbitrated in that proceeding are identical to the first five issues listed in this petition.

14. To preserve its rights and opportunities under federal statute, GNAPs determined to file the instant petition and to keep negotiating with SBC. To the extent the Parties reach further agreement, thereby reducing or narrowing the issues GNAPs wishes the Commission to arbitrate, GNAPs will provide immediate notice to the Commission.

15. Broadly speaking, negotiations have focused on the following issues: business processes and financial requirements, methods of interconnection and financial responsibility arising from methods of interconnection, local calling areas, tariff terms, use and deployment of NXX codes, payment for ISP-bound traffic, provisioning of dark fiber and trunking requirements.[8]

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[7] As explained in the previous footnote, GNAPs and SBC have agreed to waive the negotiation period in Illinois. The Parties waived the negotiation period so that the arbitration window closing date for Illinois would coincide with the arbitration window closing date for the three other states the Parties are negotiating (California, Nevada and Ohio). Thus, the Parties have agreed that the arbitration window closes on November 30, 2001, making this petition timely filed under the Act. *See* supra, note 6.

[8] As mentioned above, the Parties continue to negotiate several matters and GNAPs is hopeful that such discussions will further refine the issues the Commission will be asked to resolve.

16. In order to accommodate SBC, GNAPs agreed to negotiate the terms of a new interconnection by proposing revisions to SBC's Proposed "13 State" Interconnection Agreement ("Template Agreement") as the base-negotiating document. The Parties then attempted to negotiate changes to the Template Agreement. As described below, although there is no dispute over the vast majority of terms in the agreement, the Parties have reached an impasse on several key issues.

17. A "redline" draft of the interconnection agreement reflecting the Parties' respective positions on these key issues is attached hereto as Exhibit B ("Agreement"). Agreed upon language is shown in normal type. Disputed or unresolved language is underlined or is shown as strike through, embodying the unresolved issues in this petition. GNAPs requests that the Commission address the disputed language in this Agreement and the underlying issues surrounding such language, and adopt GNAP's proposed resolution to each issue with language provided in GNAP's redlined draft Agreement.

18. In Section V of this Petition, "Unresolved Issues," GNAPs discusses all of the key unresolved issues in detail. However, this Petition does not necessarily identify all of the provisions in the attached "redline" draft of the Template Agreement that affect these key issues. For that reason, GNAPs requests that the Commission resolve this dispute by (i) adopting the interconnection Agreement between GNAPs and SBC reflecting the undisputed contract language shown in Exhibit B; and (ii) resolving the disputed issues on a policy level and affirmatively ordering the Parties to implement contract language embodying this policy decision, including GNAPs' proposed language contained in Exhibit B.

19. GNAPs initiated the negotiation process with SBC through several different 252(i) letters sent earlier this year.[9] SBC's Template Agreement was first received by GNAPs in August of 2000 and on or about September 27, 2001 the newest reciprocal compensation appendix was received.

20. On or about October 4, 2001 GNAPs made its first formal request for SBC's availability to commence negotiations via teleconference. On or about October 12, 2001 in order to expedite good faith negotiations GNAPs proposed weekly teleconferences to discuss proposed revision to the SBC Agreement. SBC's representatives generally agreed to this approach. However, due to a jury duty obligation by SBC's lead negotiator, the Parties agreed to commence negotiations via e-mail, with plans to discuss issues via teleconference a week or so later. Despite these promises, SBC did not respond to GNAPs' proposed revisions via e-mail and the negotiations were slow to start. Also on October 12, SBC agreed to extend the closing date of the Parties' arbitration window, making November 30, 2001 the date the arbitration window closes.

21. Prior to the initial teleconference, on October 24, 2001 GNAPs provided SBC with its proposed redlined revisions to SBC's Template Agreement. At the same time, GNAPs explained that the issues of Numbering, FX, Performance Measurements and Reciprocal Compensation were still under review and redlined comments would be provided to SBC shortly.

22. Three weeks after its first request to initiate negotiations via teleconference, GNAPs and SBC held an initial teleconference on October 25, 2001.

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[9] On August 16, 2001, GNAPs sent a letter, in accordance with 47 U.S.C. § 252(i) requesting interconnection negotiations in Illinois. Letters were also provided for California and Nevada on January 19, 2001, and for Ohio on March 2, 2001.

During this teleconference the Parties did not discuss the substantive terms of the interconnection Agreement but only discussed how the Parties would approach the interconnection negotiations. The following day on October 26, 2001, GNAPs and SBC representatives briefly discussed one issue in the proposed redline. However, the issue was not resolved. At the same time, GNAPs provided SBC with a memorandum identifying issues GNAPs intends to raise during interconnection negotiations and provided redlines revisions to the Numbering, FX, Performance Measurements and Reciprocal Compensation Appendices of SBC's Template Agreement.

23. During the month of October several redlined versions of SBC's Template Agreement were exchanged between GNAPs and SBC and on or about October 19, 2001, GNAPs contacted SBC to further clarify the need to run comparisons of the redlined sections of SBC's December 2000 Template Agreement with SBC's newest 13-state agreement dated September 18, 2001. Later on October 23, 2001, SBC responded to the request and agreed that GNAPs' redlining of the December 2000 Template Agreement was satisfactory. Also, during this conversation, GNAPs proposed waiving the formal negotiation period so that the arbitration window closing date for Illinois would coincide with the arbitration window closing date for the three other states in play (California, Nevada and Ohio). SBC's representative stated that they would be open to this idea, but would reexamine the question during formal negotiations.

24. On November 1, 2001 GNAPs again contacted SBC requesting a response to GNAPs' proposed revisions to SBC's Template Agreement. GNAPs also requested that the Parties discuss the interim interconnection proposal raised in GNAPs' memo of October 26, 2001. SBC responded on November 2, 2001, promising to deliver comments

on the proposed redline revisions and to respond to GNAPs interim connection proposal via e-mail on November 6, 2001. In that communication SBC applauded GNAPs willingness to accommodate SBC's schedule and negotiate via email.

25. GNAPs did not receive any comments from SBC on November 6 and, therefore, GNAPs again contacted SBC on November 7, 2001, to request that negotiations move forward more expeditiously. GNAPs expressed concern that the issue of interim interconnection was a high priority but had not yet been addressed by SBC. On the same date, GNAPs contacted SBC and again requested that SBC countersign a letter agreement extending the arbitration windows. It was GNAPs' understanding from a previous phone conversation with SBC that the letters would be signed and returned. Also, in the same communication, GNAPs again raised the issue of waiving the negotiation period for Illinois and requested a response from SBC on this issue.

26. GNAPs contacted SBC on November 13, 2001 noting the time-sensitive issues that required resolution. Several attempts had been made to solicit a response from SBC to the following outstanding negotiation issues: countersigning a letter agreement extending the negotiating deadlines; finalizing a tentative agreement on consolidating the Illinois arbitration timeline with the California, Nevada and Ohio (with respect to the close of the negotiating period); and the interim interconnection issue.

27. Finally, on November 15, 2001 the first of the Parties planned “weekly” teleconferences took place. Among the issues discussed was the possibility of interim interconnection and GNAPs’ request to waive the negotiation period for Illinois negotiations. In an effort to expedite the negotiations and narrow the number of issues between the Parties GNAPs proposed to remove some of the issues in dispute with SBC.

To that end, GNAPs promised to deliver a memo identifying its highest priority negotiating issues. In response, SBC proposed to deliver language on an interim interconnection arrangement in the form of a Memorandum of Understanding ("MoU"), by close of business on November 19, 2001.

28. As promised, the following day (November 16, 2001) GNAPs provided SBC with a memo identifying its top interconnection priorities and its highest priority negotiating issues along with a new redline version of the proposed Template Agreement that contained only revisions to the narrower set of priority issues. Thus, in an effort to drive negotiations forward GNAPs effectively conceded a number of issues when it delivered to SBC the memorandum and redline with only a limited amount of disputed issues.

29. As a follow up to SBC's promise to provide a MoU on the interim interconnection issue, GNAPs reminded SBC of its promise to deliver a proposal by close of business on November 19, 2001. At the same time, GNAPs reminded SBC of GNAPs' previous requests to include all of its operations for California, Nevada, Ohio, Illinois and Connecticut into this interim arrangement. SBC negotiators responded that they would not be able to provide a draft interim interconnection agreement as promised and requested an additional day to provide same on November 20, 2001.

30. Without explanation, on November 21, 2001, SBC cancelled the Parties' planned weekly interconnection negotiations teleconference.

31. Finally, on November 26, 2001 SBC provided the long-awaited interim interconnection MoU, with the caveat that is was still under internal review and should only be considered a draft.

32. During a negotiation teleconference on the same day, November 26, 2001, the Parties discussed each of GNAPs' priority interconnection issues. For the five issues that are already being arbitrated before the Connecticut DPUC, the Parties agreed that they would not be able to reach a resolution. For that reason the Parties "agreed to disagree" and moved on to a discussion of those issues that could be resolved. Although all of GNAPs' priority issues are identified as unresolved issues in this petition the Parties have committed to continue negotiations with the intent of resolving some of these issues and removing them from the arbitration as the issues are resolved. Finally, during this teleconference SBC's lead negotiator verbally agreed to waive the negotiating period for Illinois.

33. On November 27, 2001, GNAPs provided SBC with a counter proposal to SBC's proposed interim interconnection MoU.

IV. RESOLVED ISSUES

34. There are a large number of contractual provisions that the Parties do not dispute. These issues include the general terms and conditions of the Agreement, as well as the terms found in the resale, unbundled network elements ("UNEs") (save for dark fiber), collocation, numbering, and performance measurement portions of SBC's Template Agreement.

35. In addition, the Parties continue to negotiate over many of the terms raised in this Petition and GNAPs is hopeful that there will be a resolution of these issues such that the Parties can agree to remove them from the arbitration proceeding.

V. UNRESOLVED ISSUES AND THE POSITIONS OF THE PARTIES

36. As discussed more fully below, there are several important inter-related issues that separate the Parties.

37. First, the Parties cannot resolve the method by which the Parties will interconnect their networks and the resulting cost of transport to each party under that interconnection method. Federal law clearly establishes GNAPs' right to establish a single point of interconnection ("POI") with Ameritech-IL in each LATA in which it interconnects with Ameritech-IL.[10] Moreover, federal law also states that Ameritech-IL bears full financial responsibility for delivering GNAPs-bound traffic from Ameritech-IL's own customers to the single POI.[11]

38. A second area of dispute centers on GNAPs' right to define its own local calling areas and to utilize numbering resources in a manner that allows it to offer competitive choices to Illinois consumers. GNAPs contends that federal law permits, and sound public policy requires, that CLECs like GNAPs be allowed to define their own local calling areas broadly and to utilize numbering resources, specifically distant or "virtual" NXX codes, in a manner that guarantees competitive communications choices for Illinois consumers.[12]

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[10] *See US West Communications, Inc. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999) (affirming arbitration decision that required Parties to adopt a single point of interconnection based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point).

[11] *See In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, FCC 01-132, CC Docket No. 01-92, 16 FCC Rcd 9610, ¶¶ 70, 72 (Apr. 27, 2001) ("Intercarrier Compensation NPRM"); s*ee also In the Matter of Joint Application by Sprint - Florida Communications Inc., Southwestern Bell telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, FCC No. 01-29, CC Docket No. 00-217, 16 FCC Rcd 6237, ¶¶ 233-235 (Jan. 22, 2001) ("Oklahoma/Kansas 271 Order").

[12] *See*, *e.g.*, *Implementation of Section 254(g) of the Communications Act of 1934, Policy And Rules Concerning The Interstate Interexchange Marketplace*, Notice of Proposed Rulemaking, FCC 99-43, CC Docket No. 96-61, 14 FCC Rcd 6994 (1999) (discussing the consumer benefits of wide-area calling plans in wireless sector); *In the Matter of the Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, 2001 Ky. PUC LEXIS 873 (Ky. P.U.C. Mar. 14, 2001) (ruling that virtual NXX calls shall be treated as local calls when the customer is physically located within the same LATA as the calling area with which the telephone number is associated).

39. Because Ameritech-IL has the obligation to deliver traffic to GNAPs' single POI at its expense (and wherever technically feasible), Ameritech-IL's costs are unaffected by the physical location of the GNAPs customers to which Ameritech-IL-originated traffic might be delivered. Public policy allowing Ameritech-IL to avoid any applicable intercarrier compensation obligations (or to impose access charges on GNAPs) based on either the physical location of GNAPs' customers or the NPA-NXX codes that characterize those customers' telephone numbers would stifle the development of local exchange competition, including competition based on the size and nature of local calling areas.

40. The Parties also differ with respect to two other issues. GNAPs first contends that under federal standards for ILEC provisioning of unbundled network elements, Ameritech-IL may not seek to limit the amount of, or condition access to, dark fiber it provisions to GNAPs in an arbitrary or discriminatory fashion, nor favor its own uses over those of requesting CLECs like GNAPs.[13] Finally, GNAPs believes that the Agreement should provide less onerous restrictions regarding the use of two-way trunking for all types of traffic whenever possible.

[13] *See Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("UNE Remand Order").

Issue 1: SHOULD EITHER PARTY BE REQUIRED TO INSTALL MORE THAN ONE POINT OF INTERCONNECTION PER LATA?

GNAPs' Position: No. GNAPs is not required to install more than one POI per LATA and may establish a single POI per LATA. GNAPs has the right to designate any technically feasible point at which both Parties must deliver traffic to the other Party.

Ameritech-IL's Position: GNAPs must establish multiple POIs within each of Ameritech-IL's local exchange areas to exchange traffic between the Parties.

41. Under federal law, a CLEC may elect to interconnect with an ILEC at any single, technically feasible point on the ILEC's network. The single POI serves as the point at which the CLEC delivers ILEC-bound traffic. On the ILEC's side of the single POI, the ILEC is responsible for transporting telecommunications traffic bound for CLEC customers to this single POI at its own expense. As the FCC has explained:

> Section 251(c)(2) of the Act gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible *point* on that network, *rather than* obligating such carriers to transport traffic to less convenient or efficient interconnection *points*. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic.[14]

42. In addition, the United States Court of Appeals for the Ninth Circuit has explicitly ruled that a CLEC has the right to establish a single POI per LATA for the mutual exchange of telecommunications traffic.[15] This Commission has also found that a CLEC may interconnect with the ILEC network at a single point within a multi-tandem

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[14] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *First Report and Order*, 11 FCC Rcd 15499, ¶ 209 (1996) ("Local Competition Order") (emphasis added). *See also Application of Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, Memorandum Report and Order*, FCC 00-238, CC Docket No. 00-65, 15 FCC Rcd 18354, ¶ 78 (June 30, 2000) ("Texas 271 Order").

[15] *See US West Communications, Inc. v. MFS Intelenet, Inc*., 193 F.3d 1112 (9th Cir. 1999) (affirming arbitration decision that required Parties to adopt a single point of interconnection based on the statutory requirement that LECs be permitted to interconnect at any technically feasible point); *see also*, *MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, Nos. 00-2257 and 00-258, slip op. (3rd Cir., Nov. 2, 2001) (ruling that CLEC can not be required to interconnect at points where it has not requested to do so).

LATA.[16] Thus, although the Parties may agree to multiple POIs over time as traffic and other conditions warrant, in no case is GNAPs required to establish more than one POI per LATA. [17]

43. The Commission should reiterate its decision on this issue by expressly ruling that GNAPs may establish a single POI, including but not limited to a fiber optic meet-point, allowing efficient fiber-optic facilities for the exchange of all traffic. Further, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement – GT&C, Definitions; §§ 1.1.95, 1.3.2: Appendix NIM §§ 1.11, 2.1, 2.2, 2.3, 2.4, 3.4.7, 4.1, 4.2, 5.2.

Issue 2: SHOULD EACH PARTY BE RESPONSIBLE FOR THE COSTS ASSOCIATED WITH TRANSPORTING TELECOMMUNICATIONS TRAFFIC TO THE SINGLE POI?

GNAPs' Position: Yes. Each carrier is financially responsible for transporting telecommunications traffic to the single POI.

Ameritech-IL's Position: No. Each carrier is responsible for transporting telecommunications traffic to the boundary of Ameritech-IL's local exchange area. Ameritech-IL is not responsible for the transportation of the telecommunications traffic to a POI located outside of this area.

44. Each Party is responsible for transporting telecommunications traffic on its "side" of the POI, and is obligated to compensate the terminating Party for the transport and termination of its originating traffic from the POI to the designated end user

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[16] *See Re: Level 3 Communications Inc*., Dock. No. 00-0332, Illinois Commerce Commission, slip op., PUR 4th (I.C.C. Aug. 30, 2000); *see also Re: Focal Communications Corporation of Illinois Petition for Arbitration Pursuant to Section 252(b) with Illinois Bell Telephone Company, d/b/a Ameritech-IL Illinois*, 00-0027, 2000 Ill. PUC LEXIS 477 (I.C.C. May 8, 2000) (rejecting Ameritech proposal that CLEC should be required to establish a POI within 15 miles of the rate center for any NXX code that the CLEC uses to provide FX service).

[17] GNAPS is not suggesting that the Parties be barred from voluntarily establishing additional POIs if they both agree that doing so would be convenient. GNAPS ***is*** suggesting that Ameritech-IL be barred from ***requiring*** GNAPS to interconnect at multiple points. In this regard, it is significant that the obligation in Section 251(c)(2) to allow a requesting carrier to interconnect at any technically feasible point is limited to ILECs.

via reciprocal compensation. This position – based on FCC rules and decisions[18] – is consistent with this Commission's policy to encourage competition in the provision of local exchange services, is equitable to both Parties, and is supported by federal law.

45. GNAPs requests that the Commission find that GNAPs is not responsible for the transport costs associated with Ameritech-IL's originating traffic. Ameritech-IL, the incumbent carrier, should be financially responsible for getting its customers' traffic to the single POI. Furthermore, from a policy perspective, it is appropriate to require carriers to transport their originating traffic to their side of the single POI at their own cost. To require otherwise would shift Ameritech-IL's costs of doing business onto GNAPs.

46. Ameritech-IL proposes that GNAPs establish multiple POIs in each LATA at which GNAPs will receive traffic from Ameritech-IL. Moreover, the POIs that Ameritech-IL would have GNAPs establish for the receipt of traffic from Ameritech-IL would be at locations on Ameritech-IL's network at or near the originating end office. The purpose and effect of Ameritech-IL requiring this patchwork of POIs is to shift to GNAPs the cost of delivering Ameritech-IL-originated traffic to GNAPs. This purpose is made clear by Ameritech-IL's position that if GNAPs does not establish the requisite patchwork of POIs, GNAPs must pay for the additional transport costs to deliver originating traffic to the single POI.

47. As other Commissions have recognized,[19] the ILEC should be responsible, both operationally and financially, for transporting the traffic on its network. In an

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[18] *See* 47 C.F.R. § 51.305(a)(2); Oklahoma/Kansas 271 Order, ¶¶ 233-35.

[19] *See e.g.,* Memorandum from Division of Competitive Services and Division of Legal Services, Florida Public Service Commission to Director, Division of the Commission Clerk Administrative

addendum issued to the Final Arbitrator's Report in an AT&T-Pacific Bell arbitration proceeding, a California arbitrator specifically ruled that interconnecting carriers should be financially and operationally responsible for construction and maintenance of facilities on their respective side of the POI.[20] Specifically, the arbitrator stated that:

> [E]*ach carrier should be responsible for construction and maintenance of its own facilities on its side of the POI*. AT&T should not be required to pay for interconnection facilities on Pacific's side of the POI. Pacific is compensated by charging AT&T reciprocal compensation for the traffic carried over Pacific's facilities.[21]

48. Based on this ruling, the Arbitrator made clear that the CLEC (AT&T) has no obligation to construct facilities to the ILEC's (SBC subsidiary Pacific Bell) end offices.[22]

49. The FCC has also found that each interconnecting party must transport its originating traffic to the single POI at its own cost.[23]

50. Ameritech-IL's costs associated with delivering its originating traffic to the Parties' single POI should be absorbed by Ameritech-IL irrespective of whether or not this traffic extends beyond Ameritech-IL's local exchange area, just as GNAPs

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Services, Docket No. 000075-TP (Nov. 21, 2001) *available at* http://www.psc.state.fl.us/psc/dockets/index.cfm (decision concerning Docket No. 000075-TP wherein the Staff recommends that Parties be permitted to negotiate the definition of local calling areas for the purposes of reciprocal compensation, but where negotiations fail, the local calling area should be defined as "all calls that originate and terminate in the same LATA"); *see also Re AT&T Communications of the Southern States Inc. d/b/a AT&T*, Docket No. 000731-TP PSC-01-1402-FOF-TP, Final Order on Arbitration (Fla. P.S.C. June 28, 2001).

[20] *See, e.g., Application of AT&T Communications of California, Inc. (U 5002 C), et al., for Arbitration of an Interconnection Agreement with Ameritech-IL Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Addendum to Final Arbitrator's Report, A.00-01-022, D.00-08-011 (Cal. P.U.C. July 17, 2000).

[21] *See id*., at Item 6, Issue 18-1 and 18-2 (emphasis added).

[22] *See id*.

[23] *See, e.g.,* Intercarrier Compensation NPRM at ¶ 78.

absorbs the costs of carrying traffic on its side of the network to the POI. The Parties should establish a single, LATA-wide, fiber-optic-based, high-capacity POI at which they will exchange traffic. Each Party should be responsible for arranging facilities on its side of the POI in an appropriate and efficient manner. Neither Party should be bound by, or even particularly affected by, the other Party's network architecture decisions, either as a matter of legacy arrangements or as a matter of future innovations. Each Party should be required to carry its customers' originating traffic to the POI and exchange it there. In addition, each Party should provide facilities and trunking from the POI to all end users on its network.

51. The Commission should resolve this issue on a policy level by expressly ruling (a) that the Parties shall establish a single POI allowing efficient fiber-optic facilities for the exchange of all traffic; (b) that physical arrangements for routing traffic to that POI shall be under the control of the originating Party (with due allowance for maintaining adequate facilities to prevent unacceptably high blocking levels), and at that Party's expense; and (c) that the physical arrangements for routing traffic received at the POI for delivery to the called Party shall be under the control of the terminating carrier, but subject to payment by the originating Party of reciprocal compensation. Further, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement – GT&C, Definitions; §§ 1.1.95, 1.3.2: Appendix NIM §§ 1.11, 2.1, 2.2, 2.3, 2.4, 3.4.7, 4.1, 4.2, 5.2.

Issue 3: SHOULD AMERITECH-IL'S LOCAL CALLING AREA BOUNDARIES BE IMPOSED ON GNAPs, OR MAY GNAPs BROADLY DEFINE ITS OWN LOCAL CALLING AREAS?

GNAPs' Position: Ameritech-IL's Template Agreement should not constrain GNAPs from defining its own local calling areas, including establishing a LATA-wide local calling area.

Ameritech-IL's Position: GNAPs' local calling areas must mirror Ameritech-IL's existing legacy calling areas.

52. A clear benefit of establishing a single POI per LATA, where each Party is responsible for facilities and routing on its side of the POI, is that such an arrangement places the fewest constraints on either Party's ability to offer competitive retail service offerings. Thus, if the Commission orders the Parties to adopt language that will embrace a single POI, GNAPs expects to offer its customers the benefits of a LATA-wide local calling service, consistent with current cost and technological conditions in the telecommunications industry.

53. GNAPs should be allowed to broadly define its own local calling area, possibly as large as a single LATA, in part because there is no economic or technical reason for local calling areas to be any smaller than a LATA. Further, GNAPs' position does not attempt to dictate, or affect, how Ameritech-IL chooses to divide its retail service offerings into "local" or "toll" calls. By the same token, GNAPs should not be economically constrained by Ameritech-IL's Template Agreement to mirror Ameritech-IL's legacy local calling areas.

54. To the contrary, the Parties' interconnection Agreement should reflect the economic and technical reality that the distinction between "local" and "toll" calls —

especially on an intra-LATA basis — has become artificial.[24] Doing so will provide GNAPs the maximum economic flexibility to compete with Ameritech-IL by offering wider calling area options than those currently offered by Ameritech-IL and other ILECs. Many state Commissions have agreed with GNAPs' position on this issue.[25]

55. Ameritech-IL's position appears to be that its existing local calling area designations are embedded within its network facilities. However, if GNAPs is forced to conform its network and operations to Ameritech-IL's network, GNAPs will incur significant uneconomic expense. SBC's Template Agreement forces GNAPs to accept inefficient interconnection architecture choices and prohibits GNAPs from offering an economically viable LATA-wide local calling area service. This occurs because the Agreement extends Ameritech-IL's ***retail*** pricing practices and policies, which distinguish between "local" and "toll" calls despite their virtually identical cost, into its ***wholesale*** interconnection relationships with GNAPs and other CLECs.

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[24] That is, current economic and technical conditions in the industry do not support continued reliance on small local calling areas. Instead, in technical and economic terms, there is no particular reason for Ameritech-IL to maintain small local calling areas, and certainly no reason whatsoever for a new competitor, not saddled with Ameritech-IL's legacy network architecture and other decisions, to do so. Thus, in the current economic and regulatory environment the only real distinctions between "local" and "toll" calls relate to LEC pricing options, not any meaningful reflections of technology or economics.

[25] *See* Memorandum from Division of Competitive Services and Division of Legal Services, Florida Public Service Commission to Director, Division of the Commission Administrative Services, Docket No. 000075-TP 39 (Nov. 21, 2001) *available at* http://www.psc.state.fl.us/psc/dockets/index.cfm (decision concerning Docket No. 000075-TP wherein the Staff recommends that Parties be permitted to negotiate the definition of local calling areas for the purposes of reciprocal compensation but where negotiations fail, the local calling area should be defined as "all calls that originate and terminate in the same LATA"); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion Into Competition for Local Exchange Service*, Decision No. 99-09-029; Rulemaking No. 95-04-043, Investigation No. 95-04-044, 1999 Cal. PUC LEXIS 649 *25 (Cal. P.U.C. Sept. 2, 1999)(stating that enhanced local calling area offerings are technologically and economically efficient); *In Re Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI, 1996 Ohio PUC LEXIS 361 (Ohio P.U.C. June 12, 1996)("[CLECs] should be permitted to establish their own local calling area which can arguably vary from the ILECs. As pointed out by staff, end users should ultimately benefit from this proposal because they will have the ability to compare providers based not only upon price, quality, and perceived value but upon calling area as well.").

56. For these reasons, the Commission should resolve this issue by restating its policy determination that carriers may define their own local calling areas, and ordering the Parties to adopt language that does not economically prohibit GNAPs from offering LATA-wide local calling service to its customers. Specifically, the Commission should allow GNAPs to define its own local calling areas in a manner that allows it to offer competitive choices to Illinois consumers.

57. This policy determination will drive a number of specific changes throughout the Template Agreement. Therefore, the Commission should adopt this policy decision in this arbitration proceeding and order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement -- GT&C, Definitions: Exchange Area, Foreign Exchange, Interexchange Carrier, IntraLATA Toll Traffic, Local Calls, Local Service Provider, Routing Point; Reciprocal Compensation Appendix, Sections 3.2, 3.7, 6.2; Appendix Numbering, Sections 2.3, 2.

Issue 4: CAN GNAPs ASSIGN TO ITS CUSTOMERS NXX CODES THAT ARE "HOMED" IN A CENTRAL OFFICE SWITCH OUTSIDE OF THE LOCAL CALLING AREA IN WHICH THE CUSTOMER RESIDES?

GNAPs' Position: The primary function of NXX codes is for network traffic routing, not rating, purposes. Accordingly, NXX codes no longer need to be associated with any particular physical customer location and GNAPs should be allowed to assign NXX codes in a manner that fosters competitive choices for customers.

Ameritech-IL's Position: The Commission should not allow calls to end user customers with NXX codes in a certain rate center to be treated as local calls unless those end user customers actually maintain a physical presence in that rate center. In addition, GNAPs must pay some amount of costs that Ameritech-IL claims to incur in originating calls to customers who are located outside the rate center.

58. A telephone number contains NXX codes that make up the first three numbers of the telephone number after the area code designation (*e.g.*, (312) NXX-1234). The three numbers that make up the NXX code historically have linked the telephone

number to a particular central office near the customer's actual physical location. These codes provided routing information and billing information to the ILEC.

59. Technology, however, has changed this dynamic. "Virtual" NXX codes now can be used to call a person with a particular NXX and that person need not be located near the central office historically associated with that NXX.[26] Moreover, coupled with advances in number portability technology and today's powerful billing software, any LEC can seamlessly bill a virtual NXX call as a local call regardless of geography and even if it crosses ILEC-defined local calling areas.[27] Taken together, these technological advances could permit carriers such as GNAPs to offer Illinois wireline customers calling plans competitive with those now enjoyed by customers of wireless carriers.[28] Ameritech-IL is attempting to thwart these developments by imposing toll charges on calls that cross its local calling areas, or subjecting such calls to access or transit charges.[29]

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[26] GNAPs recognizes that this Commission has previously ruled that virtual NXX calls are similar to FX calls for compensation purposes, however, submits that the Commission should reconsider because each party bears its own costs to transport traffic from the POI to its own customers. *See e.g. TDS Metrocom, Inc. Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant To Section 252(b) of the Telecommunications Act of 1996* 01-0338, 2001 Ill. PUC LEXIS 829 (August 8, 2001); *Re Level 3 Communications, Inc*., Docket No. 00-0332, Slip Opinion (I.C.C., August 30, 2000).

[27] *See Illinois Bell Telephone Company Tariff, Ill. C.C. No. 19 Part 4 Section 3.*

[28] Though Ameritech-IL's access revenues might present a superficial concern, it should be noted that the Commission favors reducing access charges to cost-based rates. *See e.g., Illinois Commerce Commission On Its Own Motion vs. Illinois Bell Telephone Company, et. al. Investigation into Non-Cost Based Access Charge Rate Elements in the Intrastate Access Charges of Incumbent Local Exchange Carriers in Illinois*, Order, Docket Nos. 97-0601; 97-0602; 97-0516 (Cons.) (March 29, 2000). Moreover, federal policy favors abolishing such charges. *See, e.g., Developing a Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, CC Docket No. 01-92, ¶¶ 11-18 (rel. April 27, 2001) (Access charges permit regulatory arbitrage, allow terminating access monopolies, distort the structure and level of end-user charges, and distort an entity's subscription decision creating incentives for entities to charge more for off-net calls, thereby promoting monopolies.)

[29] GNAPs recognizes that the Commission has ruled in a different context that an ILEC's local calling area constitutes the demarcation point for differentiating local and toll call types for traffic

60. The Parties' Agreement should not contain provisions that attempt to link the NXX code of the telephone number assigned to a particular customer with the location of that customer's premises or Customer Premises Equipment ("CPE"). Both Parties should be free to make retail offerings that define a customer's local calling privileges narrowly or broadly. By restricting the assignment of NXX codes to the customers' physical locations, Ameritech-IL would limit its competitors' ability to provide new service offerings and to define larger local calling areas.

61. The Commission's consideration of this issue may benefit from recalling an analogous circumstance wherein ILECs offer what is essentially a virtual NXX service. It is not unusual for an ILEC customer to desire a "presence" in a location other than the one in which the customer is physically located. In traditional telephone terms, this circumstance is referred to as involving a "foreign" rate center or, more generally, a "foreign exchange" ("FX"). All relevant ILECs – including Ameritech-IL– offer FX or FX-like service to accommodate this market demand. Virtually all ILECs' FX offerings

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termination compensation purposes. *See Re Level 3 Communications, Inc*., 00-0332, Slip Opinion (ICC, August 30, 2000); *TDS Metrocom, Inc.: Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech Illinois Pursuant To Section 252(b) of the Telecommunications Act of 1996* 01-0338, 2001 Ill. PUC LEXIS 829 (2001). However, GNAPs is not proposing to alter Ameritech-IL's local calling area definitions but to release NXX codes from a geographical location. Moreover, GNAPs is not attempting to increase the amount of its reciprocal compensation revenues without offering Illinois citizens the benefits of wide local calling areas. Rather, just as Illinois customers have benefited from increased competition in the provision of wireless services, whereby carriers have differentiated themselves by increasing the geographic scope of their local calling areas and reducing "roaming" charges, GNAPs seeks to offer the benefit of such geographically large local calling areas to wireline customers. Moreover, as "communities of interest" become more dispersed and as wireless calling plans become increasingly popular, it is clear that customers expect LATA-wide and even nation-wide local calling areas, such as AT&T Wireless' One-Rate plan. Unless and until competitive carriers are freed from anachronistic calling area boundaries, wireline customers will not enjoy the same advantages that wireless customers now enjoy.

– including Ameritech-IL's – meet their customer's needs without assessing a toll charge to the calling party.[30]

62. For example, a Ameritech-IL subscriber physically located in Paw Paw might want a Chicago telephone number so that callers in the Chicago local calling area can reach the Paw Paw subscriber without placing a toll call to Paw Paw.[31] To meet its customer's needs, Ameritech-IL assigns a Chicago telephone number (with a Chicago NPA-NXX code) to the Paw Paw subscriber, and charges the Paw Paw subscriber for "Foreign Exchange" or FX service. Importantly, if a CLEC customer in Chicago dials the Ameritech-IL FX subscriber's Chicago FX number, the call is rated as "local" and the CLEC must pay Ameritech-IL reciprocal compensation on that call.

63. Oddly, Ameritech-IL does not accept symmetry if the facts are changed and the call is originated by a Ameritech-IL customer in the Chicago calling area to a *CLEC's* Paw Paw FX customer with a local number also in Chicago Ameritech-IL takes the position that this call, while still rated as "local" from the standpoint of the calling party, is not subject to reciprocal compensation and must be treated as toll, with the terminating FX number treated as a Feature Group A ("FGA") switched access line. Thus, unless a CLEC is prepared to provide facilities between a subscriber's actual location and the location of the FX, Ameritech-IL's framework prevents CLECs from competing for FX customers.

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30 *See Illinois Bell Telephone Company Tariff, Ill. C.C. No. 19 Part 4 Section 3.*

31 For illustrative purposes, this example assumes Paw Paw and Chicago are in distinct Ameritech-IL local exchange areas.

64. The Commission should resolve this issue on the policy level by expressly ruling that GNAPs can utilize NXX codes in an innovative manner[32] and that Ameritech-IL may not deny these uses by attempting to require that the NXX code of the telephone number assigned to a particular customer be linked to the location of that customer's premises or CPE.

65. This policy determination will drive a number of specific changes throughout Ameritech-IL's Master Agreement. Thus, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement -- G T&C, Definitions FX, Information Access Traffic, ISP, IntraLATA Toll Traffic, Local Calls, Location Routing Number, Routing Point, Rating Center, Wire Center, Switched Exchange Access Service; Appendix Numbering.

Issue 5: IS IT REASONABLE FOR THE PARTIES TO INCLUDE LANGUAGE IN THE AGREEMENT THAT EXPRESSLY REQUIRES THE PARTIES TO RENEGOTIATE RECIPROCAL COMPENSATION OBLIGATIONS IF CURRENT LAW IS OVERTURNED OR OTHERWISE REVISED?

GNAPs' Position: There is continuing uncertainty surrounding the question of whether ISP-bound calls are local traffic, subject to reciprocal compensation under 47 U.S.C. § 251(b)(5). Because the FCC's most recent ruling on this issue is currently being challenged before federal appellate courts, there is good reason to include specific language in the Agreement obligating both Parties to renegotiate these issues if current law changes.

[32] This Commission has petitioned the FCC to provide it more control over its numbering system. *Petition For Declaratory Ruling And Request For Expedited Action On The July 15, 1997 Order Of The Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, And 717; Implementation Of The Local Competition Provisions Of The Telecommunications Act Of 1996*, 13 Comm. Reg. (P & F) 867, ¶ 30 (1998) and has conducted proceedings directed toward innovative solutions to numbering issues. *See Petition to Implement a Form of Telephone Number Conservation Known as Number Pooling Within the 312, 773, 847, 630 and 708 Area Codes*, ICC Docket Nos. 97-0192/97-0211 (cons.) (May 11, 1998) Therefore, GNAPs' request is complementary to the Commission's desire to use NXX numbers efficiently and effectively.

Ameritech-IL's Position: The Parties' should agree to utilize bill and keep for the exchange of all "local" traffic while compensation for the exchange of toll traffic shall be based on access charges.

66. GNAPs continues to believe that ISP-bound traffic is local traffic, subject to reciprocal compensation under 47 U.S.C. 251(b)(5). It also notes the history of this Commission in directing carriers to pay reciprocal compensation for calls delivered to ISPs.[33] Nonetheless, GNAPs recognizes that the FCC issued a decision finding that ISP-bound calls are a form of "information access" not subject to reciprocal compensation under Section 251(b)(5).[34] The FCC, however, made clear that ILECs may not treat ISP-bound calls differently from other calls subject to compensation under Section 251(b)(5). Instead, the FCC permitted ILECs to elect to subject ISP-bound calls to certain rate- and minute-caps (where the capped rates would apply to *all* compensable calls), or to waive the caps and treat ISP-bound calls just like "plain vanilla" compensable local calls.

67. GNAPs understands that an ILEC's election likely would turn on its comparison of it own projections of the number and rate of growth of ISP-bound calls (as to which the FCC's Order allows the ILEC to limit outgoing compensation payments) with its own projections of traffic (such as incoming wireless traffic) as to which the ILEC typically receives substantial compensation payments. By tying the rate that the ILEC must pay for outgoing ISP-bound calls to the rate it is permitted to receive for incoming calls, the FCC creates a significant choice for ILECs. In this proceeding, it is

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[33] *See, e.g., Order, Teleport v. Illinois Bell*, Docket No. 97-0404, 97-0519, 97-0525 (Consolidated (I.C.C. March 11, 1998), *aff'd, Illinois Bell Tel. Co. v. WorldCom, Techs, Inc.,* 1998 WL 419493 (N.D. Ill. 1998), *aff'd, Illinois Bell Tel. Co. v. WorldCom Techs., Inc*., 179 F.3d 566 (7th Cir. 1999).

[34] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *Intercarrier Compensation for ISP-Bound Traffic*, *Order on Remand and Report and Order*, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001) ("*ISP Remand Order*").

impossible to know what reciprocal compensation arrangements will apply between the Parties until Ameritech-IL makes this requisite election.[35]

68. Moreover, the FCC's recent order is on appeal and may be modified.[36] In these circumstances, GNAPs suggests that the Parties' interconnection Agreement reflect Ameritech-IL's election and expressly recognize that the issue of compensation for ISP-bound calls might need to be revisited if the FCC's recent Order is stayed, vacated, reversed, or modified during the period that the Parties' contract is in effect. Thus, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement – Appendix Reciprocal Compensation.

Issue 6: SHOULD LIMITATIONS BE IMPOSED UPON GNAPS' ABILITY TO OBTAIN AVAILABLE AMERITECH-IL DARK FIBER?

GNAPs' Position: No. Ameritech-IL is obligated to provision this UNE at any technically feasible point upon reasonable terms and conditions.

Ameritech-IL's Position: GNAPs may only order "spare" fibers subject to usage and reclamation conditions and must collocate in Ameritech-IL central offices.

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[35] GNAPs' understanding (upon information and belief) is that Ameritech-IL maintains that it has somehow not yet made its choice between treating ISP-bound calls as subject to the FCC's rate and minute caps and treating them as subject to Section 251(b)(5)'s reciprocal compensation regime. If this is so, then Ameritech-IL is plainly violating the FCC's ruling. The *ISP Remand Order* expressly prohibited ILECs from engaging in this kind of waffling: "Because we are concerned about the superior bargaining power of incumbent LECs, we ***will not allow them*** to 'pick and choose' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier." *ISP Remand Order* at para. 89 (emphasis added). These elections are to be made on a state-wide basis. *Id.* at para. 89 & n.179. Given that Ameritech-IL has entered into a number of new contracts with CLECs since the *ISP Remand Order* took effect last June, Ameritech-IL ***must*** have already made its election, and is now bound by it. The uncertainty attending Ameritech-IL 's failure to make the required election also supports GNAPs' position to include language in the Parties' agreement to abide by the final, nonappealable order of the FCC or court of competent jurisdiction, and not by Ameritech-IL 's attempts to game the system.

[36] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, FCC 01-131*, CC Docket Nos. 96-98, 99-68 (rel. Apr. 27, 2001), *appeal docketed*, No. 01-1218 and 01-1274 (consolidated) (D.C. Cir. May 17, 2001).

69. GNAPs objects to Ameritech-IL's attempt to impose various limitations and conditions upon GNAPs' ability to order dark fiber from Ameritech-IL. UNEs must be provided at any technically feasible point and upon just, reasonable and nondiscriminatory terms and conditions.[37] The Commission in the *UNE Remand Order* determined that dark fiber was a component of two UNEs (loops and interoffice transmission facilities) on its National List of UNEs.[38] The FCC noted that because dark fiber provides high transmission capabilities at relatively low cost, "unbundling dark fiber is essential for competition in the provision of advanced services."[39] It explicitly rejected the ILECs' scarcity argument for limitation of dark fiber mirrored in Ameritech-IL's restrictive dark fiber template language, finding that advances in utilization of fiber through the deployment of more powerful electronics would likely make such concerns unfounded.[40] While the FCC provided for a role for state Commissions in limiting access to dark fiber, it clearly circumscribed that role to cases involving a clear threat to ILECs' ability to function as carriers of last resort.[41]

70. The limitations Ameritech-IL seeks to impose upon GNAPs' access to Ameritech-IL dark fiber are arbitrary, discriminatory, anti-competitive, not required by

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37 47 U.S.C. §251(c)(3), 47 C.F.R. §§ 51.307-51.319.

38 *UNE Remand Order* at ¶¶ 174, 325.

39 *Id.* at ¶ 196.

40 *Id.* at ¶ 198.

41 *Id.* at ¶ 352 ("In addition, however, if incumbent LECs are able to demonstrate to a state commission that unbundling dark fiber threatens their ability to provide service as a 'carrier of last resort,' states have the flexibility to establish reasonable limitations and technical parameters for dark fiber unbundling. We conclude, however, that for a limitation on dark fiber to be reasonable, it must relate to a likely and foreseeable threat to an incumbent LEC's ability to provide service as a carrier of last resort. In establishing reasonable limitations and technical parameters for dark fiber, states should acknowledge that requesting carriers require regulatory certainty in order to implement their business plans.").

law and not justified by Ameritech-IL's own network requirements. Ameritech-IL limits dark fiber that GNAPs may obtain as a UNE to "spare" fibers. Such fibers exclude "maintenance fibers" and fibers set aside and documented for Ameritech-IL's forecasted growth. Of the fibers that remain, only 25% of the facilities in the segment requested may be ordered. In a further arbitrary condition on availability, in areas where spare fiber falls below eight strands, Ameritech-IL will provide remaining spares only in quantities of two strands.

71. While even one of these limitations is questionable, their concurrent interaction is particularly objectionable. Under the Template Agreement, spare facilities do not include maintenance spares, fiber reserved for Ameritech-IL's future use based on planning estimates for future growth, defective fibers or non-working fibers cover by agreements with other carriers. Thus, Ameritech-IL's own reasonable requirements for fiber are met before the use of spare fiber is ever considered. To date, Ameritech-IL has provided no showing that it needs these contested provisions in order to provide service as a carrier of last resort. Indeed, under Ameritech-IL's language, it has exempted from "spare" dark fiber available to CLECs those strands which it has forecasted as needed for maintenance purposes as well as its own future use. A recent arbitration decision in one leading state has rejected many of the same provisions contained in Ameritech-IL's Template Agreement.[42]

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[42] See *Application by Pacific Bell Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, LLC (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Application 01-01-010, at 144-45 (Cal. P.U.C. Jan. 8, 2001) (Among the arbitrator's findings were that Pacific Bell's dark fiber costs were not reasonable and should not include investment costs; Pacific Bell's proposed 25% limit on spare fiber was not reasonable; there was no justification for reservation of dark fiber for Pacific Bell's own forecasted growth over the following 12 months; and Pacific Bell's provisions regarding dark fiber reclamation from CLECs were not reasonable).

72. GNAPs also believes that the interconnection Agreement should make clear that it has a right to access dark fiber at any technically feasible point and that it may require Ameritech-IL to splice fiber at requested points. The Template Agreement presently requires collocation at an Ameritech-IL central office at one end and provides no clear right to splicing upon GNAPs' request. The Agreement should also impose calendar deadlines for notification by Ameritech-IL regarding the availability of dark fiber and turn up of ordered fiber.[43] All such unreasonable terms and conditions placed upon dark fiber availability in the Template Agreement should be removed and replaced with the suggested changes in the Agreement. Thus, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement -- Appendix UNE, Section 13.

Issue 7: WHETHER TWO-WAY TRUNKING IS AVAILABLE TO GNAPs AT GNAPs' REQUEST.

GNAPs' Position: Two-way trunking should be available to GNAPs at GNAPs' Request.

Ameritech-IL's Position: Two-way trunking will be available only upon mutual agreement of the Parties.

73. GNAPs may utilize two-way trunking at its own discretion. FCC regulations state that a LEC shall provide two-way trunking upon request of the CLEC if such trunking is technically feasible.[44] This Commission has interpreted the FCC

[43] This Commission recently concluded that Ameritech-IL should be required to respond to dark fiber facility inquiries within specific time intervals. *See 21st Century Telecom of Illinois, Inc. et al. Joint Submission of the Amended Plan of Record for Operations Support Systems*, Order, Docket No. 00-0592, 2001 Ill. PUC LEXIS 78, *228 (I.C.C. January 24, 2001).

[44] 47 C.F.R. § 51.305(f) (2000).

regulations on interconnection, and found that the CLEC has a right to two-way trunking.[45] Therefore, if GNAPs requests two-way trunking to interconnect, two-way trunking should be used. However, Ameritech-IL's template language mandates that two-trunking will be installed only with the Parties mutual agreement and only where "appropriate." *See* Appendix ITR, Section 3.3. However, under Commission precedent,[46] GNAPs may dictate the method of interconnection. Accordingly, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* Appendix ITR Sections 3.3, 3.5, 4, 5; Appendix Reciprocal Compensation Sections 4, 9.5, 15.

Issue 8: IS IT APPROPRIATE TO INCORPORATE BY REFERENCE OTHER DOCUMENTS, INCLUDING TARIFFS, INTO THE AGREEMENT INSTEAD OF FULLY SETTING OUT THOSE PROVISIONS IN THE AGREEMENT?

GNAPs' Position: The four corners of the Agreement control any term or provision that affects the dealings of the Parties. Otherwise, Ameritech-IL may unilaterally amend the terms and conditions of the Agreement.

Ameritech-IL's Position: It is unclear whether Ameritech-IL will limit reference to outside documents, such as tariffs, to simple price references, without the unilateral ability to affect material terms of the Agreement.

74. GNAPs seeks certainty over the terms of the interconnection Agreement. Extraneous documents, including tariffs, may change over time. Therefore, any term or provision that affects the dealings of the Parties should be included in the Agreement itself. GNAPs asserts that if documents such as tariffs and CLEC handbooks are incorporated by reference into this interconnection Agreement, Ameritech-IL will have

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45 *Re AT&T Communications of Illinois, Inc.*, 96-AB-005, 173 P.U.R. 4th 486 (I.C.C. Dec. 3, 1996)(finding that AT&T may request two-way trunking for interconnection, and the ILEC must provided such trunking absent a showing of technical infeasibility).

46 *See id*.

the ability to unilaterally amend the terms and conditions of Agreement. Moreover, interconnection agreements cover services that are separate from tariffs, so Ameritech-IL's incorporation of tariffed terms is extraneous and unnecessary.[47] Lastly, Ameritech-IL's tariffs will apply equally to all of its affected customers irrespective of any cross-references in the interconnection Agreement. Thus, Ameritech maintains the opportunity to interact with its customers as it sees fit.

75. Ameritech-IL's proposal is much too open-ended: "The terms contained in this Agreement and any Schedules, Exhibits, Appendices, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by reference, constitute the entire agreement between the Parties." Under Ameritech-IL's proposed language, any document referred to in the interconnection Agreement becomes a part of the Agreement. However, Ameritech-IL can unilaterally and without notice change many of these documents, giving GNAPs no certainty over the materialterms it has negotiated and/or arbitrated with Ameritech-IL. Thus, the terms of the interconnection Agreement could be an ever-moving target, at Ameritech-IL's sole discretion.

76. The California Public Utilities Commission ("CA PUC") recently rebuffed Pacific Bell's attempts to import extraneous documents (including tariffs) into the four corners of a Commission-approved interconnection Agreement.[48] Pacific Bell is, of

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[47] *See e.g. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499, ¶ 610 (1996) ("Section 252 procedures, however, apply only to "request[s] for interconnection, services, or network elements pursuant to section 251." Such procedures do not, by their terms, apply to requests for service under section 201.").

[48] *Application by Ameritech-IL Telephone Company (U 1001 C) for Arbitration of an Interconnection Agreement with MCImetro Access Transmission Services, L.L.C. (U 5253 C) Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Application 01-01-010 (Filed January 8, 2001).

course, an affiliate of Ameritech-IL. For the same reasons relied upon by the CA PUC, GNAPs requests that the Commission accord GNAPs the right to rely upon terms and conditions negotiated within the context of Sections 251 and 252 of the Act and strike Ameritech-IL's references to extraneous documents such as its tariffs, guides and related documentation. *See* SBC Template Agreement -- G T&C, Definitions; §§ 2, 7, 8, 13.

Issue 9: WHETHER THE INTERCONNECTION AGREEMENT IS A JOINT WORK PRODUCT.

GNAPs' Position: The contract is not a joint work product and should not include a provision stating that it is.

Ameritech-IL's Position: The contract is a product of equally positioned carriers, making such a provision appropriate.

77. The Template Agreement includes a provision stating that the contract is a joint work product of both Parties. *See* General Terms and Conditions, Section 2.7. This provision is inaccurate and should be stricken. The contract is an Ameritech-IL template developed over time with the input of numerous Ameritech-IL attorneys and regulatory specialist from many states. Accordingly, the document is "slanted" in favor of Ameritech-IL on a wide range of issues. Even with GNAPs' revisions, the contract remains preferential to Ameritech-IL, and the negotiations between the Parties did not remedy this situation. The contract is not a joint work product and it should not state that it is. Therefore, GNAPs requests that the Commission strike this provision in the interconnection Agreement, as illustrated in Exhibit B. *See* SBC Template Agreement -- G T&C Section 2.7.

Issue 10: SHOULD AMERITECH-IL'S PERFORMANCE INCENTIVES INCORPORATE A PROVISION REQUIRING THAT THE PERFORMANCE INCENTIVES ARE GNAPs' SOLE AND EXCLUSIVE REMEDY?

GNAPs' Position: GNAPs should be permitted to seek any available remedy for Ameritech-IL's breach of the agreement, including any Ameritech-IL failures to meet performance commitments.

Ameritech-IL's Position: Ameritech-IL believes that any penalties resulting from failure to meet performance measurements should be viewed as liquidated damages and as the exclusive remedy for any such failure.

78. Ameritech-IL characterizes the performance measurements contained within the Agreement as "liquidated damages" which "shall be the sole and exclusive remedy of CLEC for Ameritech-IL's failure to meet specified performance measures and shall be in lieu of any other damages CLEC might otherwise seek for such breach through any claim or suit brought under any contract or tariff." Ameritech-IL's characterization is inaccurate as a matter of law, and contrary to the Telecommunications Act and this Commission's decisions.

79. GNAPs should not be precluded from seeking additional damages in the event that Ameritech-IL fails to meet specified performance measures. GNAPs has not agreed that Ameritech-IL's proposed remedies suffice as liquidated damages, which, by design are intended to approximate the amount necessary to put the aggrieved party in the position it should have occupied but for the shortfalls. Generally, performance incentives are not designed to approximate liquidated damages, but to constitute a system of incentives, an enforcement mechanism to promote an ILEC's satisfactory performance of its obligations under the Act.

80. Because liquidated damage provisions are agreed to by the Parties as a reasonable estimation of the damages that would be incurred in the case of the specified breach, "agreement by both Parties is a key element."[49]

81. Mechanisms designed to promote satisfactory performance of contractual obligations are insufficient measurements of damages sustained by one party in the event of breach of those conditions. Therefore, the Commission must not allow Ameritech-IL to transform incentives into limitations on damages and deny GNAPs' rights to seek its own remedies for Ameritech-IL's failure to perform according to the interconnection Agreement.

82. GNAPs proposes to remove entirely Ameritech-IL's performance measurement section and apply only those measurements relevant to its operations. Accordingly, GNAPs requests that the Commission order a blocking objective of 1% for all trunk groups, as measured during peak usage[50] or such relevant performance measurements as the FCC adopts in its pending rulemaking proceeding in CC Docket No. 01-318.[51] Therefore, GNAPs requests that the Commission strike this provision in the interconnection Agreement, as illustrated in Exhibit B. *See* SBC Template Agreement – Appendix Performance Measurements.

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49 *TDS Metrocom, Inc.: Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Illinois Bell Telephone Company d/b/a Ameritech-IL Illinois Pursuant To Section 252(b) of the Telecommunications Act of 1996* 01-0338, 2001 Ill. PUC LEXIS 829, *142 (I.C.C. 2001).

50 *Re Level 3 Communications, Inc*., 00-0332, slip op. (I.C.C., August 30, 2000).

51 *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Association for Local Telecommunications Services for Declaratory Ruling*, Notice of Proposed Rulemaking, CC Docket Nos. 01-318, 98-56, 98-147 and 98-141 (rel. Nov. 19, 2001).

Issue 11: SHOULD THE INTERCONNECTION AGREEMENT REQUIRE GNAPs TO OBTAIN COMMERCIAL LIABILITY INSURANCE COVERAGE OF $10,000,000 AND REQUIRE GNAPs TO ADOPT SPECIFIED POLICY FORMS?

GNAPs' Position: The interconnection agreement may require GNAPs to obtain minimum commercial liability insurance coverage far lower than those contained in the current template agreement and should allow GNAPs to use an umbrella policy in lieu of more specific categories of insurance to meet Ameritech-IL's reasonable insurance requirements.

Ameritech-IL's Position: GNAPs must obtain commercial liability insurance coverage of up to $10,000,000 and must provide insurance coverage in explicitly defined categories.

83. Under Ameritech-IL's proposed insurance requirements, GNAPs would be forced to maintain commercial general liability insurance with minimum limits of $10,000,000, including $5,000,000 for each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence, a $1,000,000 per occurrence sub limit for personal injury and advertising, a $10,000,000 products completed operations aggregate limit, with a $5,000,000 per occurrence sub-limit for products/completed operations. Two additional insurances are required upon stated contingencies: a fire legal liability sub limit of $2,000,000 if the Agreement involves collocation, and, if use of an automobile is required, automobile liability insurance with limits of $1,000,000 combined single limits per occurrence for bodily injury and property damage.

84. GNAPs believes that the level of these insurance requirements is excessive and represents a covert barrier to competition. The Template Agreement does not require Ameritech-IL to pay for similar insurance and therefore Ameritech-IL would garner a competitive advantage with each dollar of excessive insurance premiums it imposes upon GNAPs. GNAPs therefore proposes the following reduced limits: Commercial General Liability insurance with minimum limits of: $1,000,000 General Aggregate limit, including a $1,000,000 per occurrence sub-limit for all bodily injury or property damage

incurred in any one occurrence; no sub-limit for personal injury and advertising; a $1,000,000 Products/Completed Operations Aggregate limit, with a $1,000,000 each occurrence sub-limit for Products/Completed Operations; and Fire Legal Liability sub-limits of $1,000,000 if the Agreement involves collocation. GNAPs thinks Ameritech-IL's proposed automobile insurance requirement would both duplicate existing automobile insurance requirements under state law and be excessive in degree, and therefore should be completely deleted.

85. GNAPs also believes that it should be permitted to substitute an umbrella excess liability policy for the insurance minimum limits listed in the preceding section. So long as the relevant potential risks to Ameritech-IL, GNAPs and their customers are adequately covered through one or more policies, the precise form of such insurance should be left to GNAPs' discretion. Accordingly, the Commission should order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* SBC Template Agreement – GT&C, § 4.7.

Issue 12: SHOULD THE PARTIES BE BOUND BY AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, OR MAY THE PARTIES AGREE TO RESOLVE DISPUTES THROUGH EXISTING FEDERAL AND STATE FORUMS OF LAW AND EQUITY?

GNAPs' Position: The Parties should not be bound by obligatory requirements to utilize alternative dispute resolution ("ADR") but should be free to pursue all legal and equitable rights in any appropriate federal or state forum of law or equity.

Ameritech-IL's Position: The Parties should contract away their ability to pursue legal and equitable rights in federal or state forums. Furthermore, the Parties should agree to a binding arbitration process (drafted and conceived by Ameritech-IL) that limits the time, place and manner in which GNAPs can pursue remedies under the Agreement.

86. There is no affirmative federal or state requirement that requires Parties to an interconnection agreement to submit to binding alternative dispute resolution ("ADR") procedures. While some competitive carriers believe the ADR process is beneficial, GNAPs believes that it can seek the most efficient and effective recourse arising from a contractual dispute with Ameritech-IL through existing federal and state forums.

87. Indeed, this Commission has stated that it is "disinclined to impose an ADR process on an unwilling party" [52] because interconnecting carriers already have a range of available options in the event a dispute arises between the Parties.[53] Moreover, as the Commission explained, it continues to retain its authority to oversee the local exchange market and, accordingly, is obligated to ensure that the providers of local telecommunications services serve the public interest.[54] For these reasons, the Commission has ruled that "[s]o long as we maintain such jurisdiction over these matters, the Parties can bring disputes to this forum."[55]

88. This Commission has explicitly revealed the same types of concerns with a binding ADR process that GNAPs outlines in this petition:

> The unrebutted evidence was that the ADR process would, in all likelihood, be more cumbersome and time consuming than current dispute resolution avenues already available to the Parties, whether through the ICC, the FCC or the courts, because it would simply add a layer of litigation-like proceedings, prior to a final conclusion. . . Adopting the ADR proposal could effectively take the Commission out of the loop, thus either hindering or precluding it from

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52 *See Re AT&T Communications of Illinois, Inc.*, Arbitration Decision, 96-AB-005, 173 PUR4th 486 (I.C.C. 1996).

53 *Id*.

54 *Id*.

55 *Id*.

> satisfying its statutory obligations, further supporting the conclusion that AT&T's proposal for a mandatory ADR procedure should not be adopted.[56]

89. Based on these reservations the Commission has declined to impose a binding ADR process on interconnecting carriers.[57] The same result is appropriate here.

90. By contrast, Ameritech-IL's proposed Template Agreement establishes detailed dispute resolution procedures that bind the time, place and manner in which GNAPs could pursue a remedy to a breach of the interconnection Agreement. By mandating the time, place and manner in which GNAPs could pursue a legal or equitable remedy Ameritech-IL's proposed Template Agreement effectively hinders GNAPs' ability to pursue such rights, while benefiting Ameritech-IL.

91. The Commission should establish rules and precedent that allow interconnecting Parties to treat interconnection agreements arbitrated under the Act operate more like commercial agreements between the Parties.[58] GNAPs believes that its proposed alternative dispute resolution language satisfies that objective because it provides the Parties an opportunity to informally resolve disputes arising out of the Agreement while still leaving intact both Parties' rights to pursue legal and equitable remedies in an appropriate forum.

92. The Commission should not allow Ameritech-IL to dictate the time, place and manner in which GNAPs seeks to pursue its legal and equitable rights under the

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[56] *See Re AT&T Communications of Illinois, Inc.*, Arbitration Decision, 96-AB-003, 004 (consol.), slip op. (I.C.C. 1996).

[57] *Id*.

[58] *See, e.g., Re AT&T Communications of California, Inc., et. al*., A.00-01-022, Decision 00-08-011, slip op. (Cal. P.U.C. 2000) (California PUC's stated goal is to have interconnection agreements work more like commercial agreements).

Agreement. Instead, the Commission should resolve this issue on a policy level by expressly ruling that the Parties shall be free to pursue legal and equitable rights in any appropriate federal or state forum. The Commission should further order the Parties to implement GNAPs' proposed contract language included in Exhibit B. *See* Ameritech-IL Template Agreement -- General Terms and Conditions, Section 10.

Issue 13: SHOULD THE INTERCONNECTION AGREEMENT INCLUDE LANGUAGE THAT ALLOWS AMERITECH-IL TO AUDIT GNAPS' "BOOKS, RECORDS, DATA AND OTHER DOCUMENTS"?

GNAPs' Position: The interconnection agreement should not include language that allows either party to audit the other party's books, records, data and other documents.

Ameritech-IL's Position: Either party may audit the other party's books, records, data and other documents on an annual basis.

93. Under Ameritech-IL's proposed audit requirements, GNAPs would be forced to provide Ameritech-IL access to all of its "books, records, data and other documents." These terms are not defined in Ameritech-IL's proposed template Agreement and constitute an unreasonably broad description of GNAPs' records. Without limitation to these terms Ameritech-IL can arguably access almost any piece of data, analysis or proprietary information that GNAPs has under its control.

94. GNAPs objects to Ameritech-IL's attempt to impose an audit process on GNAPs, and believes that there is no need for the Parties to agree to contract language that allows for the audit of the other party's books, records, data and other documents. The audit process described in Ameritech-IL's proposed template Agreement requires GNAPs to submit to a process that forces it to open all of its proprietary business records to Ameritech-IL, a competitor of GNAPs in the provision of local exchange services.

95. GNAPs believes that the terms of the proposed Template Agreement are sufficiently clear and ensure compliance with the Agreement for the purposes of billing and record keeping purposes. There is no independent reason to allow Ameritech-IL unequivocal access to GNAPs' data, analysis and proprietary information for purposes of compliance with the terms of the Agreement. If Ameritech-IL believes that GNAPs has not complied with the terms of the Agreement it maintains the right to pursue appropriate legal or equitable relief in the appropriate federal or state forum. For that reason there is no reason to include language in the Agreement that forces the Parties to open their records for the other party.

96. For these reasons, the Commission should resolve this issue on a policy level by expressly ruling that the Parties are not required to include audit language in the proposed interconnection Agreement. The Commission should further order the Parties to implement GNAPs' proposed deletion of Ameritech-IL's audit language, as illustrated under Section 11 of the Agreement in Exhibit B. *See* SBC Template Agreement – General Terms and Conditions, Section 11.

VI. CONCLUSION

97. GNAPs requests that the Commission arbitrate the unresolved issues described above and resolve each issue in GNAPs' favor.

98. GNAPs requests that the Commission find that GNAPs' proposed modifications to Ameritech-IL's Template Agreement are reasonable and consistent with the law. Accordingly, GNAPs requests that the Commission approve its revisions to Ameritech-IL's Template Agreement, as described above, and grant such other and further relief as the Commission deems appropriate.

99. GNAPs finally requests that the Commission reaffirm the goals of the Act and allow GNAPs to rationally deploy its network in Illinois according to the technical and economic needs of its customers, rather than those of its competitor.

Respectfully submitted,

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